

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK P. SUTER,

Defendant-Appellee.

UNPUBLISHED

March 31, 1998

No. 201902

Recorder's Court

LC No. 96-503498

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to quash and dismissing two counts of negligent homicide, MCL 750.324; MSA 28.556. We affirm.

The elements of negligent homicide are (1) that the defendant was operating a motor vehicle, (2) in a negligent manner, (3) that the defendant's negligence was a substantial cause of an accident resulting in injuries to one or more persons, and (4) that those injuries caused the death of the persons injured. See *People v Lardie*, 452 Mich 231, 247-248, n25; 551 NW2d 656 (1996). The defendant's conduct need only be a proximate cause of death, not the sole cause, and the victim's negligence is not a defense, although it is relevant in determining whether the defendant was negligent. *People v Tims*, 449 Mich 83, 96, 98; 534 NW2d 675 (1995).

Because the negligent homicide statute does not set up a definite standard of conduct or test of negligence, the information must set forth specific acts of alleged negligence in order to inform the defendant of the nature of the accusation. *People v Traugher*, 432 Mich 208, 215; 439 NW2d 231 (1989). In the instant case, the prosecutor attempted to meet this requirement by charging defendant with violation of the assured clear distance statute, MCL 257.627(1); MSA 9.2327(1). However, the second sentence of that statute does not impose, as the prosecutor alleged, a general duty "to maintain assured clear or safe distance from the car in front," but only requires drivers to operate their vehicles at such speeds as will enable them to stop without running into an object in front of them, be it a pedestrian, a moving vehicle, or a vehicle stopped on the side of the road. *Lewis v Yund*, 339 Mich

441, 444-445; 64 NW2d 696 (1954). In this case, there was no evidence that defendant was speeding or that the car he struck was slowing or stopping when defendant hit it.

The prosecutor contends that defendant was negligent because he left the home of his estranged wife and chased Jeffrey Burnaine, rather than calling the police and reporting that the car driven by Burnaine was stolen. However, this action does not constitute a specific allegation of negligence within the meaning of MCL 750.324; MSA 28.556. In order to establish that defendant is guilty of negligent homicide, the prosecutor must show that defendant operated his vehicle in a negligent manner. See *Lardie, supra*. Because the prosecution has not set forth any viable allegations of specific acts of negligence, the trial court did not err in dismissing the two counts of negligent homicide.

Affirmed.

/s/ Roman S. Gibbs

/s/ Mark J. Cavanagh

/s/ Henry William Saad